IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
C.W.P. No.19950 of 2005
DATE OF DECISION: 14.9.2006
***

Brij Mohan

..PETITIONER

VS.

Presiding Officer, Labour Court Ambala & anr.

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE J.S. NARANG.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- Mr. Rakesh Kumar Sharma, Advocate
for the petitioner.
Mr. Kanwaljit Singh, Advocate
for respondent No.2.
***

ARVIND KUMAR, J.

The lis is between Thapar Industries Canteen, Gopal Nagar, Yamuna Nagar (respondent No.2 herein) and its workman Brij Mohan (petitioner herein). There were allegations of misuse of funds, shortage in accounts and non-maintenance of record etc. against the petitioner. On these allegations, the petitioner was placed under suspension and was served with a charge-sheet containing the allegations on 6.8.1991. His services were terminated vide order dated 5.5.1992. The petitioner questioned the legality of the said termination order by way of serving a demand notice upon the respondent. His claim was thoroughly contested by respondent No.2. The Labour Court on completion of proceedings concluded that the departmental enquiry which led to the termination of the workman was conducted in a fair and proper manner. It accordingly answered the reference against the workman. Dissatisfied with the same, the petitioner has filed the instant petition.

The case set up by the petitioner in this writ petition is that the

enquiry on the basis of which his services were terminated, was conducted in grave violation of principles of natural justice. He was never informed of the impugned enquiry; no charge-sheet has ever been supplied to him; he remained under suspension from 6.8.1991 till his services were illegally terminated on 8.5.1992, but during that period no subsistence allowance was paid to him; salary for the month of July 1991 was not paid and that no show cause notice was served upon him proposing the imposition of penalty of dismissal of service.

Upon notice of motion, respondent No.2 appeared and filed written statement controverting all the allegations levelled in the petition. Their stand is that the departmental enquiry was conducted in a fair and proper manner. It is the petitioner himself who intentionally and deliberately did not join the enquiry proceedings despite due notice and that the petitioner is estopped by his own act and conduct to raise any question regarding the legality of the impugned enquiry as well as termination order. Moreover, the factum of committing the embezzlement was admitted by the petitioner himself. Thus, dismissal of the petition has been sought.

We have heard learned counsel for the parties and have gone through the paper-book carefully.

The requirement of natural justice must depend upon the circumstances of the case, nature of enquiry, the rules under which the Tribunal is acting, the subject matter that is being dealt with and so forth. The strict rule of evidence are not applicable in departmental enquiry and the standard of proof being different, it is sufficient to establish a charge by evidence, albeit not by any conjecture or surmises, acting upon which reasonably and objectively, a reasonable man could uphold the charge It is

not in dispute that the petitioner was suspended on 6.8.1991. What emerges out from the evidence adduced before the Labour Court is that the petitioner himself admitted the factum of having served with a charge-sheet Annexure R2/1(Ex.M1 before the Labour Court), while appearing as WW-1. In the same breathe he also admitted that he replied the charge-sheet vide reply Ex.M-28 (before the Labour Court). In that eventuality, the Labour Court has rightly held that the petitioner was afforded reasonable opportunity to explain his conduct with regard to the charges levelled against him. Moreover, documents Ex.M4, M-5 and M-6 were placed before the Labour Court wherein the factum of committing embezzlement and misuse of funds of the Canteen was admitted by the petitioner. While tendering apology, the petitioner also requested the respondent to allow him to deposit the remaining of the amount due to him. Ex.M-5 and M-6 have also been placed before this Court along with the written statement as Annexure R2/2 and R2/3 respectively as also one document Annexure R2/4. The authenticity of these documents, which are in the hand writing of petitioner himself and bear his signature, has never been questioned by the petitioner either before the Labour Court or before this Court. The admission of the petitioner is best piece of evidence. Further, embezzlement, though temporary is equally a serious offence. A perusal of the impugned award further shows that prior to terminate his services several notices including Ex.M24, and Ex.M27 (before the Labour Court) were issued to the petitioner through registered post on the address, on which he admittedly was residing. Admittedly, a due publication of the notice was also made in the newspaper “Maharana Partap”. Though the petitioner has alleged that the said newspaper has no circulation in that area, but no proof to

substantiate the same has been produced. The sequence of the events suggests that he was well aware of the pendency of the enquiry against him. However, despite that he did not participate in the enquiry. He permitted the enquiry to proceed ex parte by his own act and conduct. Now it does not lie in his mouth to say that the enquiry was not proper on the grounds referred to above and that prior to terminate his services, he was not issued any notice thereby informing him about the proposed punishment of termination. A bare perusal of the award shows that before drawing the said conclusion, the Labour Court had discussed the evidence oral as well as documentary with reference to the different authoritative pronouncements of the Hon'ble Supreme Court. Admittedly, the petitioner availed the alternative remedy with regard to his with-held amount of wages by filing an application under the Payment of Wages Act. Thus, he cannot raise such a plea again at this juncture. An attempt has been made to show that the petitioner was not allowed to enter in the factory premises, but nothing has been produced to substantiate this plea.

While exercising the extra ordinary jurisdiction under Article 226/227 of the Constitution of India, this Court would not sit as a Court of appeal over the findings of fact recorded by the Labour Court. In our view the findings are neither perverse nor based on no evidence. In these circumstances, it would not be just and proper to interfere with the award made by the Labour Court. Accordingly, the writ petition is dismissed. No costs.

(ARVIND KUMAR)
JUDGE

September 14,2006 **(J.S. NARANG)**
Jiten **JUDGE**